

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking To Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

We award intervenor compensation to Aglet Consumer Alliance (Aglet) for its substantial contributions to Decision (D.) 02-09-053 and D.02-10-062 in the amount of \$77,446.40.

1. Background

On October 25, 2001, we opened Rulemaking (R.) 01-10-024 to establish ratemaking mechanisms to permit California's largest utilities¹ (Utilities) to resume purchasing electric energy, capacity and procurement products on or before January 1, 2003. Since early 2001, the Utilities have not purchased power for their customers' net short needs. By "net short" we refer to the difference between customer loads and the power already under contract to the Utilities or generated from a Utility-owned asset.

¹ The respondent utilities included Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E).

The Legislature enacted Assembly Bill (AB) X1-1 on January 31, 2001, authorizing the California Department of Water Resources (DWR) to make electricity purchases for the purpose of selling electricity to Utility retail customers. At that time, the Utilities were not financially able to meet their net short needs.

Under the law, DWR's authority to contract for such purchases expired on January 1, 2003. The ratemaking mechanisms and procedures that would enable the Utilities to resume the responsibility of procuring power for their customers were to be developed in this proceeding. Specifically, in a scoping memo issued April 2, 2002, the Commission identified four basic objectives of this rulemaking:

- Improve the ability of the Utilities to meet their obligations to serve their customers' electric loads;
- Enhance the Utilities' financial stability and creditworthiness;
- Diminish the need for after-the-fact reviews of the reasonableness of Utility procurements; and
- Ensure that the Utilities can recover their procurement costs in a timely fashion.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the intervenor's planned participation and an itemized estimate of the compensation the intervenor expects to request. It may also request a finding of eligibility. To be eligible, an

intervenor must establish that it is a “customer” as defined in § 1802(b)², and that participation without an award of fees or costs would impose a significant financial hardship (§1803(b)).

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

² The intervenor compensation statute uses “customer” and “intervenor” interchangeably, as we do in today’ decision.

The Order Instituting Rulemaking allowed participants to become parties of record by letter request. On October 30, 2001, Aglet sent the required letter and on February 5, 2002, Aglet filed a timely NOI including a demonstration that it met the definition of “customer,” the requirement of financial hardship and the other criteria for an award of intervenor compensation. On May 28, 2002, assigned Administrative Law Judge (ALJ) Christine Walwyn ruled that Aglet had met the requirements for seeking intervenor compensation.

3. Substantial Contribution to Resolution of Issues

An intervenor may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt an intervenor’s position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected.

In addition, in D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in Pub. Util. Code § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42.) In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in

determining the reasonableness of the request and in avoiding unproductive participation.

Aglet argues that it has made a substantial contribution to the outcome of this proceeding by demonstrating that the Utilities could resume procurement activities prior to having their investment grade credit ratings restored. Aglet also argues that its contribution was productive in the sense required by D.98-04-059 because the savings to California ratepayers of having the Utilities begin procurement activities with less-than-investment-grade credit ratings far outweighed the costs of Aglet's participation.

Aglet took part in the analysis of other issues that we considered during this rulemaking process, but its claim to entitlement to intervenor compensation, including a request for an enhanced fee, rests primarily on its contribution to our decision regarding the Utilities' credit ratings, which played an unprecedented role in these proceedings. To be sure, evaluations of the effect of Utility credit ratings on costs of capital are a regular part of some rate-setting hearings. For example, Commission staff, other intervenors and the Utilities themselves regularly discuss this topic during cost-of-capital proceedings. This case is different. Here we are dealing with the Utilities' ability to resume doing business rather than on their costs of conducting ongoing businesses.

In evaluating Aglet's claim, we begin by recognizing that an evaluation of the impact of the Utilities' creditworthiness on their ability to resume procurement activities was at the heart of this proceeding. SCE and PG&E argued that investment grade credit ratings were a necessary precondition to resumption of procurement activities. Aglet's analysis demonstrated that the Utilities had sufficient resources to resume procurement activities, including sufficient cash to provide collateral to vendors of procurement products. In

D.02-10-062, we specifically found that “Aglet provided convincing evidence that Edison’s and PG&E’s recent recorded earnings, cash positions and anticipated cash flows compare favorably with the collateral and procurement amounts required...” This finding supported our action in ordering the Utilities to resume procurement activities no later than January 1, 2003. Aglet’s participation also resulted in substantial savings to the ratepayers. In its application for intervenor compensation, Aglet credibly calculates that SCE will save its ratepayers approximately \$95 million by resuming procurement with a less-than-investment-grade credit rating. Aglet suggests that PG&E’s customers should realize similar benefits following the conclusion of its bankruptcy case. The benefits to SDG&E are harder to calculate, but in any case, the savings to the Utilities far outweigh the cost of Aglet’s participation in the proceedings.

For these reasons, we find that Aglet’s participation was both substantial and productive.

4. Reasonableness of Claimed Compensation

Aglet requests compensation in the amount of \$85,767.90, as follows:

Professional Time (306.6 hrs. @ \$220/hr.)	\$67,452.00
Fee Enhancement (25% x 151.3 hrs @ \$220/hr.)	8,321.50
Travel/Compensation Time (77.7 hrs. @ \$110/hr.)	8,547.00
Travel (bridge tolls, parking, vehicle mileage)	851.70
Copying charges	339.79
Postage & overnight delivery charges	203.91
FAX Charges	52.00
TOTAL	\$85,767.90

4.1 Hours Claimed

Aglet documented the claimed hours by presenting a daily breakdown of Director James Weil's hours with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

Aglet provides a breakdown of Weil's time by issue. In all, Weil spent 315.5 hours of professional time on the four major issues in the proceeding. Because the Commission did not adopt Aglet's position on two of the issues to which he devoted time, he has voluntarily reduced this claim by 32.9 hours, for a net claim of 282.6 hours of time on these issues. He reduced his claim for compensation on the issue of procurement risk by 10% (7.4 hours) because we did not act on Aglet's recommendation that we reduce the Utilities' authorized rates of return in the 2003 test year period. He also reduced his claim for compensation on the issue of reasonableness reviews by 50% (25.5 hours) because we relied minimally on the Aglet presentation in our final ruling. Weil claims an additional 24.0 hours of professional time for general matters that cannot be allocated to specific issues. We find that with the voluntary reductions noted herein, the hours claimed are reasonable.

Aglet requests 77.7 hours for travel time and compensation-related activities. The number of hours claimed for these activities is reasonable.

4.2 Hourly Rates

Aglet requests compensation at \$220 per hour for professional services performed by Weil in 2001 and 2002. We approved the \$220 rate for Weil in D.02-06-066 and we approve it again here.

4.3 Fee Enhancement Claimed

Weil asks that we increase his award by 25% of the time he devoted to the Utilities' cash flow and credit quality issues. Since he spent 151.3 hours on these issues, he requests an additional \$8,321.50 (151.3 hours x \$220/hr x 0.25 = \$8,321.50). Following the lead of the California Supreme Court in *Serrano v. Priest*, 20 Cal 3d 25 (1966), we have indicated in other proceedings that there are times when an enhanced fee may be appropriate. We have specified the criteria that an applicant must meet in order to qualify for such an award. In D.00-10-007, we summarized them as follows:

A. Fee Level

1. The experience, reputation, and ability of the attorney.
2. The skill required to perform the legal service properly.
3. Customary fee.

B. Compensable Hours

1. The time and labor required (reasonable number of hours to present the case).
2. Efficiency of presentation.
3. Novelty and difficulty of the issues.
4. Duplication of effort.

C. Degree of Success

1. Dollar amount involved.
2. Degree of importance of the issue.
3. The result obtained (partial or complete success on the issue).

Applying these criteria to Aglet's contribution to the cash flow and credit quality issues, and reading "professional" for "attorney" (Weil is an engineer, not a lawyer), we conclude that although Aglet made a substantial positive contribution, it did not meet the very high standards that govern an award of an enhanced fee. An enhanced fee is a rare exception to the rules that otherwise govern intervenor compensation. It is reserved for those situations where the contribution of the intervenor has resulted in an unusually beneficial outcome that can be specifically documented in the record as unique contribution of the intervenor. In this case, although Weil analyzed and rebutted the contentions of the Utilities on the central issue in the case, he was not alone in doing so. Even

without Weil's contribution, the record would have supported our decision to allow the utilities to resume power purchasing. For this reason, we believe he has not met the high standards for an enhanced fee award.

4.4 Other Costs

Aglet requests \$1,447.40 for other costs (e.g., copying, postage, travel, FAX), equal to 1.7% of the total compensation claimed. Aglet's request for reimbursement of these charges appears reasonable given the duration and complexity of the proceeding.

5. Award

We award Aglet \$77,446.40. As in all intervenor compensation decisions, we put the intervenor on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which intervenors request compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

The named respondents in this proceeding were PG&E, SCE, and SDG&E. We will assess payment responsibility among them in proportion to their respective 2002 California jurisdictional revenues.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing February 3, 2003 (the 75th day after Aglet filed its compensation request) and continuing until the Utilities make full payment of the award.

6. Assignment of Proceeding

Commissioner Loretta Lynch is the assigned Commissioner and ALJ Christine Walwyn is the assigned ALJ in this proceeding.

7. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Aglet has made a timely request for compensation for its contribution to D.02-09-053 and D.02-10-062.
2. Aglet contributed substantially to D.02-09-053 and D.02-10-062.
3. Aglet has requested hourly rates for 2001 and 2002 that have already been approved by the Commission.
4. \$220 per hour is a reasonable rate for Weil's professional services in 2001 and 2002.
5. The miscellaneous costs incurred by Aglet are reasonable.

Conclusions of Law

1. Aglet should be awarded \$77,446.40 for its contribution to D.02-09-053 and D.02-10-062.
2. This order should be effective today so that Aglet may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$77,446.40 in compensation for its substantial contribution to Decision (D.) 02-09-053 and D.02-10-062.

2. Within 30 days of the effective date of this order, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) shall pay Aglet a total of \$77,446.40 in proportion to their respective 2002 jurisdictional revenues. PG&E, SCE and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning February 3, 2003 and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

COMPENSATION DECISION SUMMARY INFORMATION

Compensation Decision(s):	
Contribution Decision(s):	D0209053 and 0210062
Proceeding(s):	R0110024
Author:	Walwyn
Payer(s):	PG&E, SCE, SDG&E,

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Aglet Consumer Alliance	2/5/2002	\$85,767.90*	\$77,446.40*	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Engineer	Aglet Consumer Alliance	\$220	2001	\$220
James	Weil	Engineer	Aglet Consumer Alliance	\$220	2002	\$220